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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,897	08/23/2001	John W. Evans	290397.0012	2267

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EXAMINER

HAMLIN, DERRICK G

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,897

Applicant(s).

EVANS ET AL

Examiner

Derrick G. Hamlin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/8/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, drawn to an antifreeze/heat transfer fluid concentrate, classified in class 252, subclass 73.
- II. Claims 22-25, drawn to a method for reducing the oral toxicity of a fluid, classified in class 514, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process, such as coolant, deicer, heat transfer, hydraulic fluid, etc.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Eric Grondahl on 2/26/04 a provisional election was made with traverse to prosecute the invention of group 2, claims 22-29.

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Affirmation of this election must be made by applicant in replying to this Office Action.

Claims 1-21 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Evaluations of level of ordinary skill in the art requires consideration of factors such as various prior art approaches employed, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, failure of others, and the inventor's educational level.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this case reasonably reflect this level of skill.

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Claims 22, 23, 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Meyers et al. (US 5118434).

Meyers a composition based on an alkylene glycol, water, corrosion inhibitor and one or more polymeric additives, where the alkylene glycol may be ethylene or propylene glycol or mixtures thereof, from about 50-99 wt % of the composition (col. 2, lines 39-55). The reference further teaches that the corrosion inhibitor may be a metal tolyltriazoles, such as sodium tolyltriazoles, a triazole, such as sodium triazole, a nitrate, such as sodium nitrate or a molybdate such as sodium molybdate, in the amount of less than 20 wt % of the composition (col. 3, lines 2-11 and 19-21).

The reference teaches the addition of a polymeric material in up to 50%, which is not instantly claimed.

However, in the absence of showing unexpected results the composition of the reference containing the additional polymer material would read on the instantly claimed heat transfer fluid. Additionally, "up to 50%" would include anything in the 0-50% range and trace amounts. If it were found that polymer materials did adversely affect the composition, it would have to be shown that even a trace amount of the polymers would be detrimental. Therefore it would have been within the preview of the skilled artisan to create the instantly claimed heat transfer fluid, since Meyers discloses a composition containing 50-99 wt % of ethylene or propylene glycol or mixtures thereof, a corrosion inhibitor.

Claims 22, 23, 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maes et al. (US 5366651).

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Maes discloses an antifreeze concentrate comprising a water-soluble liquid alcohol freezing point depressant and a corrosion inhibitor (col. 2, lines 62-65). The water-soluble liquid alcohol freezing point depressant may be water and an alkylene glycol, such as ethylene or propylene glycol or mixtures thereof (col. 3, line 65 - col. 4, line 8).

The reference teaches the addition of a carboxylic acid material as part of the corrosion inhibitor and .05-5 % of an imidazole, which is not instantly claimed.

However, in the absence of showing unexpected results the composition of the reference containing the additional acid and imidazole material would read on the instantly claimed heat transfer fluid.

Therefore it would have been within the preview of the skilled artisan to create the instantly claimed heat transfer fluid, since Maes discloses a composition containing water, ethylene or propylene glycol or mixtures thereof, a corrosion inhibitor.

The reference is anticipatory or, in the alternative would have been obvious in view of both the cited references. Neither reference teaches the composition for reducing the toxicity, however the compositions appear to be identical.

Therefore, it is the examiners position that they would inherently possess the same properties, in the absence of showing superior or unexpected results. Additionally, the skilled artisan would have a reasonable expectation that the properties of like composition would be alike.

Claims 22-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen (4,728,452).

Hansen discloses a coolant containing a mixed alcohol-glycol component comprising 40%-80% by weight of the coolant (col. 7, lines 9-15). The reference teaches glycerol, ethylene glycol and propylene glycol for use in the alcohol mixture (col. 3, lines 35-41).

The reference is anticipatory or, in the alternative would have been obvious in view of both the cited references. The reference fails to teach the composition for reducing the toxicity, however the compositions appear to be identical.

Therefore, it is the examiners position that they would inherently possess the same properties, in the absence of showing superior or unexpected results. Additionally, the skilled artisan would have a reasonable expectation that the properties of like composition would be alike.

The remaining references listed on forms 892 and 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick G. Hamlin whose telephone number is (571) 272-1317. The examiner can normally be reached on Monday-Fridays from ~8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick G. Hamlin

3/8/04



CHARLES BOYER
PRIMARY EXAMINER

